Calendar No. 548

97TH CONGRESS
2d Session

SENATE

REPORT
No. 97-387

FEDERAL REGULATION, LAKE OSWEGO, OREGON

MAY 11, 1982.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 1573]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1573) to amend the Water Resources Development Act of 1976 with respect to Lake Oswego, and for other purposes, having considered the same, reports favorably thereon with an amendment to the text and an amendment to the title, and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. Page 1, line 3, strike all after the enacting clause and insert the following:

That Part I of the Federal Power Act (Act of June 10, 1920) as amended, and section 408 of the Energy Security Act (Act of June 30, 1980), shall not be applicable to the Lake Oswego, Oregon, hydroelectric facility or Lake Oswego, until and unless otherwise provided by the Congress.

2. Amend the title so as to read:

A bill to exempt the Lake Oswego Oregon, hydroelectric facility from Part I of the Federal Power Act (Act of June 10, 1920) as amended, and for other purposes.

PURPOSE

The objective of S. 1573 is to relieve Lake Oswego, Oregon of the regulatory requirements of the Federal Energy Regulatory Commission pursuant to the Federal Water Power Act (Act of June 10, 1920) as amended and Section 408 of the Energy Security Act (Act of June 30, 1980) by reserving to the Congress sole jurisdiction as to future actions related thereto.

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BACKGROUND

Lake Oswego, with a surface area of about 400 acres is located south of Portland, Oregon. The lake was originally dammed in the 1850s to stabilize lake levels and to provide power for a small sawmill. The original dam was replaced and a small generator (540 kilowatt capacity) were installed circa 1920.

The Lake Oswego Corporation, a homeowners association of 9,000 members, owns the Lake and hydroplant and has sought relief from Federal regulation. In 1976, legislation was enacted to specifically exempt Lake Oswego and several other bodies of water from the requirements of Section 10 of the Rivers and Harbors Act of 1899. Subsequently, the Federal Energy Regulatory Commission determined that Lake Oswego and the powerplant were subject to the requirements of the Federal Water Power Act of 1920 and ordered the Corporation to file for a Federal Power license. The FERC finding has been appealed and is pending before the Ninth Circuit Court of Appeals.

Project statistics

Major project features consist of: (1) a rock and timber diversion dam on the Tualatin River at Mile 4.7; (2) a headgate structure at Mile 6.7 of the Tualatin River; (3) the 1.5-mile long Oswego Canal; (4) Lake Oswego, a 400-acre reservoir with a storage capacity of 9,800 acre-feet at elevation 98 feet; (5) Lake Oswego Dam, a 197-foot long, 25-foot high concrete dam; (6) 910 feet of 60-inch diameter wood stave pipe from the dam to a surge tank; (7) 30 feet of 48-inch diameter wood stave pipe from the surge tank to the powerhouse; (8) a powerhouse containing a single generating unit with a capacity of 540kW discharging into Oswego Creek; and (9) associated electrical and transmission equipment.

The project has an average annual generation of approximately 3,500 MWh.

LEGISLATIVE HISTORY

S. 1573 was introduced by Senator Hatfield on July 31, 1981 and is cosponsored by Senator Packwood. A hearing before the subcommittee on Water and Power was held in Washington, D.C. on April 22, 1982.

A companion measure, H.R. 1886, was introduced February 18, 1981, and is presently pending before the House Public Works and Transportation Committee.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business meeting on May 5, 1982, by unanimous vote of a quorum present recommended that the Senate pass S. 1573, if amended as described herein.

The roll call vote on reporting the measure was 17 years and 0 nays as follows:

YEAS	NAYS
Mr. McClure	
Mr. Hatfield [1]	
Mr. Weicker [1]	
Mr. Domenici [1]	
Mr. Wallop	
Mr. Warner	
Mr. Humphrey	
Mr. Murkowski	
Mr. Nickles	
Mr. East	
Mr. Heinz[1]	
Mr. Jackson	
Mr. Johnston [1]	
Mr. Ford	
Mr. Matsunaga	
Mr. Melcher [1]	
Mr. Bradley	

[1] Indicates vote by proxy.

COMMITTEE AMENDMENTS

The first amendment is in the nature of a substitute. During the April 22, 1982 hearing before the Subcommittee, the witness for the Federal Energy Regulatory Commission pointed out that in order to remove the Lake Oswego hydroelectric facility from the jurisdiction of the Commission, the bill should exempt the facility from Part I of the Federal Power Act. It was also noted that to be inclusive, Section 408 of the Energy Security Act should be referenced as well.

The amendment would remove Lake Oswego and the hydroelectric facility from FERC jurisdiction by reserving jurisdiction in the Congress.

The second amendment amends the title so as to reflect the first amendment.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs associated with this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 5, 1982.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed

S. 1573, a bill to exempt the Lake Oswego, Oregon, hydroelectric facility from Part I of the Federal Power Act (Act of June 10, 1920) as amended, and for other purposes, as ordered reported by the Senate Committee on Energy and Natural Resources, May 5, 1982. The bill explicitly precludes the prospective licensing and regulation of this facility by the Federal Energy Regulatory Commission under Part I of the Federal Power Act and section 408 of the Energy Security Act of 1980.

Based on this review, it appears that no additional cost will be incurred by the government as a result of enactment of this legislation.

Sincerely,

ALICE M. RIVLIN, *Director.*

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred on the passage of S. 1573.

It is the Committee's expressed opinion that the bill is not a regulatory measure in the sense of imposing Government established standards or responsibilities on private individuals or businesses. Quite to the contrary, S. 1573 specifically eliminates a regulatory burden which would otherwise be imposed by the Federal Government.

EXECUTIVE COMMUNICATIONS

Although S. 1573 was referred to the Department of Energy and the Office of Management and Budget on January 21, 1982, for comment, no legislative reports were received. However, following is the statement submitted by the Federal Energy Regulatory Commission before the Subcommittee at the hearing on April 22, 1982.

STATEMENT OF

KRISTINA NYGAARD

ACTING ASSISTANT GENERAL COUNSEL FOR HYDROELECTRIC LICENSING,

FEDERAL ENERGY REGULATORY COMMISSION,

BEFORE THE

SUBCOMMITTEE ON ENERGY REGULATION

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

April 22, 1982

STATEMENT OF

KRISTINA NYGAARD

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SUBCOMMITTEE ON ENERGY REGULATION

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

April 22, 1982

Mr. Chairman and members of the Subcommittee, I am pleased to be here this morning to discuss S. 1573, a bill to amend the Water Resources Development Act of 1976 with respect to the Lake Oswego hydroelectric project in Oregon.

My name is Kristina Nygaard, and I am Acting Assistant General Counsel for Hydroelectric Licensing at the Federal Energy Regulatory Commission. I would like to state at the beginning of my testimony that I am appearing before you as a technical expert and speak only for myself, not for the members of the Commission.

A brief summary of the administrative proceedings in the Lake Oswego case may be helpful. On August 4, 1977, the Lake Oswego Corporation petitioned the Federal Energy Regulatory Commission for a declaratory order finding that the Commission lacks licensing jurisdiction over its hydroelectric facility at Lake Oswego, Oregon. Specifically, the Commission was asked to find that the hydroelectric facility is operated on a non-navigable waterway and does not affect the interests of interstate commerce. In a series of orders, copies of which I am submitting for inclusion in the record, the Commission determined that the Lake Oswego project impounds navigable waters, as that term is defined in Section 3(8) of the Federal Power Act ("Act"), 16 U.S.C. 796(8)(1976). 1/ Pursuant to that determination, the Commission ordered the Lake Oswego Corporation to file a short-form

1/ See attached Order Finding Licensing Required (May 3, 1979); Order Permitting Submission in Support of Motion for Reconsideration (Aug. 1, 1979); Order Denying Reconsideration (Feb. 20, 1981); and Order Dismissing Rehearing (Apr. 9, 1981).

license application for the project, which was submitted (FERC Project No. 5249) on August 18, 1981 and supplemented on January 22, 1982. The staff's review of the license application is virtually completed. Concurrently, the Commission's orders in the Lake Oswego case are the subject of an appeal currently pending in Lake Oswego Corporation v. FERC, 9th Cir. No. 81-7351.

The proposed legislation, S. 1573, would declare the waters affected by the project to be non-navigable for purposes of the Federal Power Act. This approach would preclude the Commission from asserting its licensing jurisdiction over the project on the basis of navigability. The bill would not, however, necessarily preclude the Commission from licensing the project in the future, if present circumstances change.

For instance, under Section 23(b) of the Act, 16 U.S.C. 817 (1976), the Commission must require licensing if the project affects the interests of interstate or foreign commerce. 2/ The power from the Lake Oswego facility is currently sold to a utility that is part of an interconnected interstate system. This fact would be sufficient to support a finding of effect on interstate commerce. Only the absence of construction work on the project since 1935, a condition found by court decision to be essential, 3/ precludes the Commission from asserting licensing jurisdiction on this basis. This

2/ The two other bases for jurisdiction are where project works are located upon any part of the public lands or reservations of the United States and where the project utilizes the surplus water or water power from any government dam, in either case without a valid pre-1920 permit. 16 U.S.C. 797(e) and 817.

3/ Farmington River Power Company v. Federal Power Commission, 455 F.2d 86 (2nd Cir. 1972). The court limited to prospective application only the 1935 amendment to the Act which extended Commission enforcement jurisdiction to projects affecting interstate commerce.

jurisdictional obstacle would disappear if the project owner were to commence any construction other than repair or maintenance.

In addition, if the Lake Oswego Corporation does not obtain a license for the Lake Oswego Project, some other party may apply for and receive a license for the project. The Commission in certain situations has authority to issue licenses, when requested, even when it is without authority to require that a project be licensed; that is, its licensing authority is broader than its enforcement authority. The Commission's licensing authority is set forth in Section 4(e) of the Act, 16 U.S.C. 797(e) (1976), and extends to "streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several states... ." A body of water may meet this broad standard even though it has been found to be non-navigable for purposes of the Act. Furthermore, our jurisdiction under Section 4(e) does not Jepend upon post-1935 construction.

If the purpose of the proposed legislation is to remove this hydroelectric facility from the Commission's licensing jurisdiction, then Congress might wish to consider exempting the Lake Oswego hydroelectric facility from Part I of the Federal Power Act. The Commission would thereby be totally barred from issuing a license authorizing the construction, operation, or maintenance of a hydroelectric facility at that site.

This concludes my prepared statement, Mr. Chairman. I would be happy to answer any questions which you may have.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Georgiana Sheldon, Acting Chairman; Matthew Holden, Jr., George R. Hall and J. David Hughes.

Lake Oswego Corp.) Docket No. E-9601

ORDER DISMISSING REHEARING

(Issued April 9, 1981)

On May 3, 1979, the Commission issued an order finding that the Lake Oswego Project is required to be licensed by section 23(b) 1/ of the Federal Power Act (Act). On July 2, 1979, the Lake Oswego Corp. (Oswego) filed an untimely petition for rehearing or reconsideration of the Commission's May 3, 1979 order. On August 1, 1979, the Commission dismissed Oswego's petition for rehearing, stating that section 313(a) 2/ of the Act is a statutory bar to entertaining a petition for rehearing that is not filed within 30 days after the issuance of the disputed order. The Commission did, however, entertain Oswego's motion for reconsideration, citing the Commission's discretionary practice of addressing arguments set forth in untimely petitions for rehearing. The Commission moreover permitted Oswego to submit a memorandum in support of its motion for reconsideration, explicating in detail the specific errors of law or fact alleged with respect to the Commission's May 3, 1979 order.

On February 20, 1981, the Commission considered Oswego's memorandum and denied Oswego's pending motion for reconsideration. The Commission did not change the May 3, 1979 order, which had found that the Lake Oswego Project must be licensed. Nevertheless, Oswego has now filed a petition for rehearing of the Commission's February 20, 1981 order denying reconsideration.

The Commission's order denying reconsideration, which was a discretionary response to an untimely petition for rehearing, is not itself subject to the process of rehearing and judicial review. It is the May 3, 1979 order finding licensing required

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1/ 16 U.S.C. §817(1976).

2/ 16 U.S.C. §8251(a) (1976).

-- not the Commission's February 20, 1981 discretionary order denying reconsideration -- that aggrieves Oswego, and the Commission has already dismissed Oswego's untimely petition for rehearing of that order. 3/ Accordingly, Oswego's petition for rehearing of the February 20, 1981 order denying reconsideration is dismissed.

The Commission orders:

(A) The Lake Oswego Corp.'s March 13, 1981 petition for rehearing of the Commission's February 20, 1981 order denying reconsideration is dismissed.

(B) Alternatively, the above petition for rehearing is denied for failure to raise any issues of law or fact that were not considered previously.

By the Commission.

(S E A L)

Kenneth F. Plumb

Kenneth F. Plumb,
Secretary.

3/ See, e.g., Appalachian Power Co., 52 F.P.C. 317, 319-321 (1974); Niagara Mohawk Power Corp., Project No. 2645, Order on Reconsideration (issued Dec. 28, 1978).

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REGULATORY COMMISSION
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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Charles B. Curtis, Chairman; RECONSIDERATION
Georgiana Sheldon, Matthew Holden, Jr., and George R. Hall.

Lake Oswego Corporation) Docket No. E-9601

ORDER PERMITTING SUBMISSION IN SUPPORT OF MOTION FOR RECONSIDERATION
(Issued August 1, 1979)

On July 2, 1979, the Lake Oswego Corporation filed a petition for rehearing or reconsideration of the Commission's May 3, 1979, order finding that Lake Oswego is a navigable water of the United States within the meaning of Section 3(8) of the Federal Power Act; and that the Oswego Hydroelectric Project must therefore be licensed. The petition also requests the Commission to extend or waive the time for filing for rehearing, and to hold a hearing or allow the submission of evidence and briefs.

Section 313(a) of the Federal Power Act 1/ provides that a person aggrieved by a Commission order who wishes to obtain a rehearing on the order and to preserve the right to seek review in a United States court of appeals must file an application for rehearing within 30 days of the date of issuance of that order. The pertinent period following our order of May 3 therefore expired on June 4, 1979.

In its filing, Lake Oswego Corp. sets forth several reasons for failing to file its application for rehearing within the statutory 30 day period, and asks that we waive or extend the time for filing. The reasons given suggest that it neglected to familiarize itself with the provisions of the Federal Power Act and the Commission's rules of

1/ 16 U.S.C. § 825 l(a) (1976).

practice and procedure. 2/ In any case, we cannot extend or waive Section 313's requirement that applications for rehearing be filed within 30 days of issuance of our order. Failure to file within that time period is a statutory bar to applications for rehearing. 3/ Although we are foreclosed from entertaining an application for rehearing, in the exercise of our discretion we shall treat Lake Oswego Corp.'s July 2 filing as a motion for reconsideration.

In support of its contention that an evidentiary hearing should have been held, Lake Oswego Corp. argues that it did not request a decision without a hearing, that staff counsel did not request that a hearing not be held, and that there was no finding that due and timely execution of the Commission's functions imperatively and unavoidably required a decision without a hearing, citing §1.30 of our regulations. By its very terms, that section applies only to "proceedings required by statute to be determined on the record after opportunity for hearing." Part I of the Federal Power Act, under which this proceeding arises, provides an opportunity for hearing only in certain limited instances. 4/ The Act does not guarantee an opportunity for hearing on proceedings like this one, involving an investigation under §4(g) of occupancy of a stream for the purpose of developing electric power and a determination that licensing is required under §23(b). Our regulations provide no independent right to a hearing in such proceedings. In fact, our regulations quite explicitly inform applicants that:

2/ Section 313 itself provides that an application for rehearing be filed "within 30 days after the issuance" of the disputed order." Section 1.13(c) of our regulations provides that an order is effective on the date of issuance unless otherwise specially provided in the order. No prior notice to Lake Oswego Corp. that a hearing would not be held was necessary, because, as discussed below, neither the Federal Power Act nor our regulations provided a right to a hearing on this matter, and Lake Oswego Corp. never requested us to hold a hearing as a matter of our discretion.

3/ See, e.g., Appalachian Power Co., 52 F.P.C. 317, 319-321 (1974); Niagara Mohawk Power Corp., Project No. 2645, Order on Reconsideration (issued Dec. 28, 1978).

4/ See §§5, 7(c), 10(e), 14(a), 15(b), 20, and 23(a) [16 U.S.C. §§798, 800(c), 803(e), 807(a), 808(b), 813, 816 (1976)].

> Hearings are not required to be held in all of the Commission's proceedings. Where no hearing is held, the Commission acts on the basis of the material filed and the staff studies and recommendations thereon. [18 C.F.R. 3.103.]

In this proceeding, we acted in accordance with that provision. We conclude that there was no procedural defect underlying our order of May 3, 1979.

Turning to the allegations of substantive error, Lake Oswego Corp.'s motion for reconsideration does nothing but state in conclusory language that our decision "erroneously finds that Lake Oswego is a navigable water of the United States ... [because:]"

> a. Lake Oswego historically was not navigable and is non-navigable.
>
> b. The history recited by the Commission is incomplete and the conclusions drawn therefrom are incorrect.
>
> c. Lake Oswego is non-navigable as a matter of law under applicable statutes, including legislative history, and under controlling case law. [Emphasis in original.]

But Lake Oswego Corp. does not point to any part of our analysis of the historical evidence or the applicable law that is supposedly in error, or how the conclusion drawn might be faulty, or what statutes, legislative history, or case law support its view. The allegations of error in Lake Oswego Corp.'s motion fail to take issue with our order with the degree of specificity that would be necessary to support a petition for rehearing and subsequent judicial review. 5/ The Federal Power Act requires "something more concrete and specific than the vague references" in Lake Oswego Corp.'s motion; it demands a degree of specificity sufficient to call the Commission's attention to the particular ways

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5/ Section 313(a) of the Federal Power Act states: "The application for rehearing shall set forth specifically the ground or grounds upon which such application is based."

in which it has allegedly erred "to stimulate [the Commission's] consideration of them." 6/ Thus, the motion fails to give the Commission "notice of its alleged errors so that it may have an opportunity to correct them." 7/

Because of the lack of specificity in Lake Oswego Corp.'s pleadings, we would be justified in denying its motion. In the exercise of our discretion, however, in this instance we believe that it would neither be unreasonable nor offend the public interest to permit Lake Oswego Corp. to submit a memorandum in support of its motion for reconsideration, explicating in detail the specific errors of law or fact that it alleges with respect to our finding that Lake Oswego is a navigable water of the United States. Upon receipt of that memorandum, we shall proceed to take further action on its motion for reconsideration.

The Commission orders:

No later than 45 days from the date of this order, Lake Oswego Corporation may file a memorandum in support of its July 2, 1979, motion for reconsideration of the Commission's May 3, 1979, "Order Finding Licensing Required" in this docket. That memorandum shall explain fully the specific errors of law or fact alleged with respect to the Commission's finding that Lake Oswego is a navigable water of the United States within the meaning of Section 3(8) of the Federal Power Act, including discussion of legislation and case law and a proffer of any evidence on which its contentions rely.

By the Commission.

Kenneth F. Plumb,
Secretary.

6/ North Carolina v. FPC, 533 F.2d 702, 705-06 (D. C. Cir. 1976), vacated on other grounds, 429 U. S. 891; see also City of Vanceburg v. FERC, 571 F.2d 630, 642 (D. C. Cir. 1977), cert. denied, ___U.S.___, 99 S. Ct. 79 (1978).

7/ North Carolina v. FPC, 533 F.2d at 705, citing FPC v. Colorado Interstate Gas Co., 348 U. S. 492, 500 (1955)

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

RECONSIDERATION;
NAVIGABLE WATERS

Before Commissioners: Georgiana Sheldon, Acting Chairman; Matthew Holden, Jr., George R. Hall and J David Hughes.

Lake Oswego Corp.) Docket No. E-9601

ORDER DENYING RECONSIDERATION

(Issued February 20, 1981)

By order dated August 1, 1979, we granted the Lake Oswego Corp. (Petitioner) 45 days in which to submit a memorandum of law and fact in support of its July 2, 1979 petition for reconsideration of the Commission's May 3, 1979 "Order Finding Licensing Required" in this docket. We have received and considered Petitioner's memorandum, and for the reasons discussed below deny its motion for reconsideration.

Petitioner argues in support of its petition that: (1) when Congress enacted the Water Resources Development Act of 1976 (Pub. L. 94-587), it declared the waters of Lake Oswego to be non-navigable, thereby altering the authority and jurisdiction of the Commission--if, in fact, the Commission or any other federal agency ever had authority over the lake; and (2) the Commission relied upon an incomplete history of the usage of Lake Oswego and failed to take into consideration the proper legal standards of navigability as they apply to a privately-owned lake such as Lake Oswego.

First, Petitioner correctly states that Senator Hatfield of Oregon introduced in the Senate a bill (S.2315) that would have declared Lake Oswego and its canals "to be non-navigable waters of the United States within the meaning of the Constitution and laws of the United States." Had Congress enacted such a sweeping declaration, Petitioner's argument would be better taken. Congress, however, chose to focus instead on the reason behind Senator Hatfield's bill, which was to exempt Lake Oswego from Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. §401). Section 10 requires a Corps of Engineers permit for any wharf or pier constructed in the navigable waters of the United States.

> Section 162 of Pub. L. 94-587 states: For the purposes of section 10 of the Act of March 3, 1899 (30 Stat. 1151)(33 U.S.C. 401) the following bodies of water are declared non-navigable: Lake Oswego, Oregon; Lake Coeur d'Alene, Idaho; and Lake George, New York.

This section was taken verbatim from Section 52 of S.3823, which was reported out of the Senate Committee on Public Works and accompanied by S. Rep. No. 94-1255, 94th Cong., 2nd Sess. 124 (1976). The Senate report states that Section 52 is:

> only for the purposes of regulating boat docks and similar structures that might impede navigation. It affects no other aspects of the jurisdiction of the United States, such as those that may be administered by the Environmental Protection Agency, the Coast Guard, the Fish and Wildlife Service, or even the Corps of Engineers under other provisions of law.

It is clear that Congress' declaration of non-navigability was only for the purpose of Section 10 of the Rivers and Harbors Act of 1899, and does not preclude the Commission from finding that Lake Oswego is a navigable waterway within the meaning of Section 3(8) 1/ of the Federal Power Act (Act). Congress could have exempted the Lake Oswego Hydroelectric Project from the requirements of the Act or any other federal statute that may be triggered by a finding of navigability, but it declined to do so. Therefore, Petitioner's argument that Congress' declaration removed the Lake Oswego project from the provisions of the Act must be rejected.

1/ Section 3(8) states:

> "navigable waters" means those parts of streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, and which either in their natural or improved condition notwithstanding interruptions between the navigable parts of such streams or waters by falls, shallows, or rapids compelling land carriage, are used or suitable for use for the transportation of persons or property in interstate or foreign commerce, including therein all such interrupting falls, shallows, or rapids, together with such other parts of streams as shall have been authorized by Congress for improvement by the United States or shall have been recommended to Congress for such improvement after investigation under its authority; [41 Stat. 1064; 49 Stat. 838; 16 U.S.C. 796(8)].

Second, Petitioner argues that the Commission misapprehended the facts and the law when it found Lake Oswego to constitute navigable waters within the meaning of Section 3(8) of the Act. Notwithstanding this assertion, Petitioner attempts to rebut only one--relatively insignificant-- fact that was cited in the Commission's May 3, 1979 order. Petitioner finds it "highly questionable" whether the steamer Onward ever passed through the canal linking Lake Oswego to the Tualatin River. This disbelief is apparently based on the conflict between the Onward supposedly having a beam of 17 feet and a September 16, 1909 memorandum from the Oregon Supreme Court which stated that "the canal was cleaned out so as to make it 6 feet wide at the narrowest place." One can readily see that the above two "facts" do not offer a sound basis for concluding that the Onward did not, in 1873, successfully negotiate the canal, as reported in Willamette Landings. 2/ The fact that the canal was "cleaned out" to a width of 6 feet in no way suggests how wide the canal may have been when first constructed.

Even if we were to assume that steamboats never successfully negotiated the canal, we would not consider our order to be deficient. Steamboats passing through the Oswego Canal is not the only evidence that we relied upon in finding Lake Oswego to be navigable waters within the meaning of Section 3(8) of the Act. We also found that logs had been rafted from the upper reaches of the Tualatin River, through the canal, to an iron blast furnace on Lake Oswego. Petitioner did not object to this finding. Moreover, Section 3(8) specifically recognizes that navigable waters may include obstructions which compel land carriage. Thus, the fact that relatively large steamers may have encountered difficulty in passing through one stretch of a watercourse--in this case the canal--but could ply the waters above and below that stretch, does not preclude a finding that the entire watercourse is a navigable waterway within the meaning of Section 3(8) of the Act.

Petitioner also argues that we did not apply the correct legal standards in finding Lake Oswego to be navigable waters within the meaning of Section 3(8) of the Act. Petitioner contends that Lake Oswego is essentially a landlocked lake and that its navigable status should be determined by referring to a series of decisions that have found inland bodies of water

2/ H. M. Corning, Willamette Landings 181 (1974).

not to constitute navigable waters within the meaning of the Rivers and Harbors Act of 1899. 3/

These decisions are, in our opinion, factually distinguishable from the situation here. In each case, the court found the body of water in question to be an inland lake that had no connection with navigable interstate waters. Conversely, Lake Oswego is part of a continuous watercourse reaching the Pacific Ocean that consists of a navigable segment of the Willamette River, the relatively short non-navigable Oswego Creek, the navigable Lake Oswego, a canal that may or may not have been navigated by steamboats, and a navigable segment of the Tualatin River. 4/ Not each and every part of this continuous watercourse is navigable, but it need not be in order to meet the requirements for navigable waters within the meaning of Section 3(8) of the Act.

The Supreme Court in U. S. v. Appalachian Electric Power Co., 311 U.S. 377 (1940), its most recent decision dealing with navigability under the Act, made clear that navigability can be found "despite the obstruction of falls, rapids, sandbars, carriers or shifting currents." Moreover, the Court found that "absence of use over long periods of years, because of changed conditions, the coming of the railroad or improved highways does not affect the navigability of rivers in the constitutional sense." These principles, coupled with the well-documented uses of the waters in question to transport passengers and freight from Hillsboro to Portland and beyond, lead us to conclude that Lake Oswego is part of a continuous waterway that has functioned in the past as an avenue of interstate or foreign commerce, and that the non-navigable portions of this waterway do not preclude a finding that the entire waterway is navigable within the meaning of Section 3(8) of the Act.

The cases cited by Petitioner are also inapposite because they were decided under the Rivers and Harbors Act of 1899, which carried no definition of the term "navigable waters" and therefore relied for guidance entirely upon the Steamer Daniel Ball

3/ Minnehaha Cr. Watershed Dist. v. Hoffman, 440 F. Supp. 876 (D. Minn. 1978); Hardy Salt Co. v. Southern Pacific Trans. Co. 501 F.2d 1156 (2d Cir. 1974) cert. denied, 419 U.S. 1033 (1974); Johnson V. Wurthman, 227 F.Supp. 135 (D. Or. 1964).

4/ Petitioner admits that the Willamette River "has always been navigable to a point", that the "Tualatin River may at one time have been navigable to an extent", and that "Lake Oswego served as a navigable water to the extent that it has been used for floatation of logs from one side of the lake to the other or for the transportation of passengers or cargo from one part of the lake to the other.

and its progeny. 5/ Conversely, in Section 3(8) Congress defined navigable waters for the purpose of implementing comprehensive federal regulation of the nation's waterpower resources. The definition of "navigable waters" in Section 3(8) is clearly broader than the judicially-derived definitions previously announced by the Supreme Court, and cannot be limited by the Court's previous or subsequent rulings pertaining to navigability under the Rivers and Harbors Act of 1899. By the same token, "navigable waters" under Section 3(8) of the Act has not been expanded by more recent legislation that defines "navigable waters" as "waters of the United States." 6/

Although Lake Oswego is part of a continuous waterway that has, in the past, transported people and property in interstate or foreign commerce, it should be noted that Section 3(8) does not require that navigable waters be part of a "continuous" waterway, as is apparently the case for navigable waters under the Rivers and Harbors Act of 1899. Indeed, Section 3(8) specifically declares that navigable waters may include "parts of streams or other bodies of water [that] ... are used or suitable for use for the transportation of persons or property in interstate or foreign commerce... ." Congress apparently wanted to regulate the waterpower resources of all waterways that form a necessary link in a transportation route capable of carrying interstate and foreign commerce. 7/ We shall not defeat that purpose, which is entirely consistent with the principles underlying the concept of navigable waters, by adopting the overly narrow interpretation suggested by the Petitioner.

The Commission orders:

(A) The Lake Oswego Corp.'s motion for reconsideration of the Commission's May 3, 1979, "Order Finding Licensing Required" is denied.

5/ The Steamer Daniel Ball, 10 Wall. 557 (1870).

6/ See, Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. §1362(7) (Supp. IV, 1974).

7/ See, First Iowa Hydro Electric Cooperative v. FPC, 328 U.S. 152, 180-181 (1946) ("it was the intention of Congress to secure a comprehensive development of natural resources and not merely to prevent obstructions to navigation"); and FPC v. Union Electric Co., 381 U.S. 90 (1965) (the Court found that the Act embodies the full measure of congressional authority under the commerce clause to regulate hydroelectric projects).

(B) Within 180 days from the date of issuance of this order, the Lake Oswego Corp. of Lake Oswego, Oregon, owner of the Lake Oswego Project, shall file an application for a minor license in conformance with §4.60 of the Commission's regulations.

By the Commission.

(S E A L)

Kenneth F. Plumb,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

JURISDICTION;
NAVIGABLE WATERS

Before Commissioners: Georgiana Sheldon, Acting Chairman;
Matthew Holden, Jr., and George R. Hall.

Lake Oswego Corporation) Docket No. E-9601

ORDER FINDING LICENSING REQUIRED
(Issued May 3, 1979)

On August 14, 1977, the Lake Oswego Corporation petitioned the Commission to declare that the existing Lake Oswego Hydroelectric Project is not required to be licensed by the Commission under Part I of the Federal Power Act. The project includes a concrete dam that retains the raised waters of Lake Oswego. Water is diverted through a 1,200-foot-long wood-stave penstock to a concrete powerhouse containing a 900-hp turbine directly connected to a 500-kVA generator. The Lake Oswego Corporation contends that an order issued by the State Engineer of Oregon is the only permit required for the continued operation of the Lake Oswego Project. 1/

History of Navigability

Historical records document that Lake Oswego has long been part of a network of general and commercial transportation, aided by portages, between the vicinities of Portland, Oregon (on the Willamette River) and Hillsboro, Oregon (on the Tualatin River). During the latter part of the 19th century the Tualatin River, Lake Oswego (also known as Sucker Lake, at one time), and the Oswego Canal were used by steamers to transport freight and passengers.

In 1865, the Sucker Lake and Tualatin River Railroad began operating in the vicinity of Lake Oswego to supply timber to a sawmill on Sucker Creek, the lake's outlet to the Willamette River: 2/

1/ According to the petition, on December 9, 1959, the State Engineer of Oregon issued to the Oregon Iron and Steel Company (predecessors-in-interests to petitioners) a right to use 57.5 cfs of water from the Tualatin River for the purpose of generating electric power at its Oswego Plant.

2/ H.M. Corning, Willamette Landings 172 (1974).

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> Encouraged by its successes, the railroad's proprietors laid plans for a general transportation service from Portland to Hillsboro. The route then in use was around the Willamette Falls by portage; then along the north bank of the Tualatin, also by portage, to steamers loading upriver freight at James Moore's flouring mill above the river's un-navigable mouth. The proposed route would proceed from Portland by boat, to the landing below Oswego; from the bank of the Willamette to Sucker Lake by portage; along the lake shore, about three miles, to the railroad; over this to the Tualatin River; thence up the Tualatin by boat to Hillsboro. It was thought that, operated in reverse, freight might be brought to Portland at a cost of about $6 per ton .... The plan seemed especially feasible since at that time the river road out of Portland, along the west bank of the Willamette, had fallen into general disuse about three miles south of town, due to the preference for transit by water .... [Id. at 172-73 (emphasis added).]

During 1866, the Oswego Milling Company built the steamer Minnehaha for the trip along the lake from the portage to the railroad. A second steamer, the Onward, plied the Tualatin River as a part of this general transportation scheme. Corning reports:

> By the beginning of 1869, the Onward ran from the Depot -- now Colfax -- to Emerick's Landing, sixty miles upriver. Throughout the shipping season the boat left Colfax on its upstream trip every Thursday morning, bound as far as Forrest Grove and Centerville Landing; touching, wherever flagged, at intermediate points. Returning, it left Forest Grove and Centerville Landing each Monday at 6:00 A.M. Portland passengers wishing to connect with the weekly upriver schedule of the Onward had to take the steamer Senator .... On Wednesday evening ... passengers stopped at Shade's Hotel, in Oswego. Early the next morning the steamer Minnehaha was boarded for the trip across Sucker Lake .... From the dock at the head of the lake the portage railroad took the travelers to Colfax and the Onward. [Id. at 174-75.]

The Oswego Canal, which was constructed in the vicinity of the previously mentioned railroad portage

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that connected Lake Oswego with the Tualatin River, was completed in 1871 or 1872. Willamette Landings, refers to a canal passage by the Onward in 1873: 3/

> Finally, in 1873 the Onward successfully negotiated the narrow passage cut between the Tualatin and Lake Oswego. [Id. at 181.]

In addition to the steamers and other boats that regularly plied the waters of Lake Oswego, logs were rafted from the upper reaches of the Tualatin River, through the canal, to an iron blast furnace on Lake Oswego. According to Corning, "[t]he sawmill, situated so that the foot of the lake served as log-pond with the creek furnishing power, was 150 feet long and 42 feet wide." [Id. at 170.] A recent study 4/ conducted by several federal and state agencies also concluded that logs to be used in making charcoal were rafted from the upper reaches of the Tualatin to an iron blast furnace on Lake Oswego.

Legal Standards of Navigability

"Navigable waters" under the Act are:

> those parts of streamsor other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, and which either in their natural or improved condition notwithstanding

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3/ This appears to have been the first passage of a steamer through the canal, for the Morning Oregonian of October 22, 1872, at 3, had mentioned:

> As yet no steamer has passed from the Tualatin River to Oswego Lake through the canal which was completed just a few weeks since .... Nothing but a few small boats and rafts has yet passed down the river to the lake.

4/ See Willamette Basin Comprehensive Study--Water and Related Land Resources (1969) Appendix I - Navigation, (at I-5).

> interruptions between the navigable parts of such streams or waters by falls, shallows, or rapids compelling land carriage, are used or suitable for use for the transportation of persons or property, in interstate or foreign commerce, including therein all such interrupting falls, shallows, or rapids .... [16 U.S.C. §796(8) (1976).]

The Supreme Court has handed down a long line of cases concerning navigability. Moving beyond the "navigation in fact" test enunciated in The Steamer Daniel Ball v. United States, 10 Wall. 557 (1871), the Supreme Court declared in United States v. The Steamer Montello, 20 Wall. 430, 441 (1874):

> [T]he true test of the navigability of a stream does not depend on the mode by which commerce is, or may be, conducted, nor the difficulties attending navigation .... [T]he capability of use by the public for purposes of transportation and commerce affords the true criterion of the navigability of a river rather than the extent and manner of that use.

In Economy Light and Power Co. v. United States, 256 U.S. 113, 122 (1921), the Court addressed the relevance of obstructions in a river:

> Navigability in the sense of the law, is not destroyed because the watercourse is interrupted by occasional natural obstructions or portages; nor need the navigation be open at all seasons of the year, or at all stages of the water.

The Court concluded that obstructions, even if artificial, as well as changes in transportation methods which result in abandonment of a river for trade and travel, do not change the river's status as a navigable water. [Id. at 124.]

In 1940 the Supreme Court decided United States v. Appalachian Electric Power Co., 311 U.S. 377 (1940), which also involved navigability under the Federal Power Act. Appalachian restated much of the previous case law on navigation and developed several significant new themes. Of particular relevance to the present case, the Court said:

> Nor is it necessary for navigability that the use should be continuous. The character of the region, its products and the difficulties or dangers of the navigation influence the regularity and extent of the use. Small traffic compared to the available commerce of the region is sufficient. Even the absence of use over long periods of years, because of changed conditions, the coming of the railroads or improved highways does not affect the navigability of rivers in the constitutional sense. [Id. at 409-410. (emphasis added).]

The Commission and courts have also determined that floatation of logs is sufficient to support a finding of navigability. In Wisconsin Public Service Corp. v. Federal Power Commission, 147 F.2d 743, 798 (7th Cir. 1945), the court upheld the Commission's finding of navigability by declaring:

> [A] long, regular and commercially successful use of the stream for the transportation of logs and rafts ... forms a reasonable basis in law for the conclusion that the Wisconsin River was and is a navigable water of the United States.

More recently the Commission underscored the sufficiency of logging as a basis for finding navigability, stating:

> The evidence here of lumbering and rafting alone is sufficient to satisfy the log-driving test of navigability we have followed for over two decades with the approval of the courts. [Union Carbide Corp., 32 F.P.C. 770,773 (1969)]

Of course, any finding of navigability, as § 3(8) of the Act makes clear, is dependent on the existence or possibility of interstate or foreign commerce. A water can be a navigable waterway of the United States when it forms by itself, "or by uniting with other waters, a continued highway over which commerce is or may be carried on with other States or foreign countries." The Daniel Ball, 10 Wall. at 563. Changes in mode of transportation do not prevent a water from being part of a continued highway of commerce. Wisconsin Public Service Corp., 147 F.2d at 748. In Rochester Gas and Electric Corp. v. Federal Power Commission, 344 F.2d 594, 597 (1965), the court

supported the Commission's inference that:

> some of the goods eventually must have crossed state or national boundaries ... [because] use of a river for shipments demonstrates its suitability for use as a connecting waterway - for interstate or foreign shipments ..., [especially] where the river runs directly into acknowledged avenues of interstate or foreign commerce ... .

Conclusions

The historical uses of Lake Oswego, when judged in the light of the legal precedents set forth above, clearly show that Lake Oswego is a navigable water of the United States. The lake has been navigated by commercial boats and has also been used to float logs for commercial purposes. Lake Oswego was an integral part of a continued highway of commerce over which goods and people, were carried down the upper reaches of the Tualatin River, through the Oswego Canal or by railroad, across Lake Oswego, and overland by portage to the Willamette River, a navigable waterway of the United States. 7/ The evidence shows that Lake Oswego has been an integral part of a transportation system that encompassed other waters -- such as the Willamette -- acknowledged to be avenues of interstate or foreign commerce. Lake Oswego is, therefore, a navigable water of the United States within the meaning of section 3(7) of the Act. 8/

7/ See Tenth Annual Report of the Federal Power Commission Minor License, Project No. 38 (issued Jan. 8, 1930); and 23 FPC 831, 832 (1960).

8/ In 1974, the United States Coast Guard declared that "the waters of Lake Oswego and the Oswego Canal are navigable waters of the United States and accordingly, water subject to the jurisdiction of the United States for the purposes of Coast Guard jurisdiction ... ." Letter from Capt. C. R. Hallberg, United States Coast Guard, to the Commission's Secretary (dated April 25, 1974).

In 1972, the U.S. Army Corps of Engineers declared that Lake Oswego was a navigable water of the United States under section 10 of the Rivers and Harbors Act of 1899 [33 U.S.C. §401 (1976)]. See Notice of 17 March 1972, file NPPND-M1-P, Portland District. The Water Resources Development Act of 1976, however, subsequently declared Lake Oswego nonnavigable, but only for the purpose of section 10 of the Rivers and Harbors Act of 1899. Pub. L 94-587, § 162, 90 Stat. 2934 (eff. Oct. 22, 1976).

Because the Oswego Project's dam is located across the outlet of, and impounds, a navigable water, section 23(b) of the Federal Power Act 10/ requires that the project be licensed. The state permit authorizing project use of water from the Tualatin River does not affect this statutory licensing requirement. 11/ The Lake Oswego Project does, however, qualify under our regulations as a minor project, for which application requirements are minimal. 12/ To assist the Lake Oswego Corporation, our staff is available for consultation about the application requirements.

The Commission finds:

Lake Oswego, also known as Sucker Lake, which empties through Sucker Creek into the Willamette River in the State of Oregon, is a navigable water of the United States.

The Commission orders:

Within 180 days from the date of issuance of this order, the Lake Oswego Corporation of Lake Oswego, Oregon, owner of the Lake Oswego Project, shall file an application for a minor license in conformance with §4.60 of the Commission's regulations.

10/ 16 U.S.C. §817 (1976).

11/ Cf. Section 9(b) of the Act, 16 U.S.C. §802(b) (1976).

12/ See 18 CFR 4.60 (1978) [as amended, Order No. 11, Docket No. RM78-9 (issued Sept. 11, 1978) (43 Fed. Reg. 40215)].

By the Commission.

(S E A L)

Lois D. Cashell,
Acting Secretary.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing laws would be made by the bill, S. 1573, as reported.

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Calendar No. 549

97TH CONGRESS
2d Session

SENATE

REPORT
No. 97-388

PUMP REPAIR, SOUTHERN NEVADA WATER PROJECT, NEVADA

MAY 11, 1982.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 1621]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1621) to authorize the replacement of existing pump casings in southern Nevada water project pumping plants 1A and 2A, and for other purposes, having considered the same, reports favorably thereon with an amendent and recommends that the bill as amended do pass.

The amendment is as follows:

Page 2, line 10, following the word "appropriated" insert the phrase "beginning October 1, 1982,".

PURPOSE

As introduced, S. 1621 would authorize the appropriation of $1.5 million (July 1980 price levels) to be used for the purchase of twelve stainless steel pump casings to replace existing pump casings at two pumping plants of the Southern Nevada Water project.

BACKGROUND AND NEED

The Southern Nevada Water Project was authorized by the Act of July 19, 1966 (Public Law 89-510) and is presently under construction in Clark County, Nevada. The first phase of the project was placed in operation on November 1, 1971 and can deliver up to 132,200 acre feet of water annually from Lake Meade for municipal and industrial water use in Las Vegas, North Las Vegas, Henderson, Boulder City, and Nellis Air Force Base. The second stage, which is under construction, will provide for the delivery of an additional 166,800 acre feet annually.

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Recent operating problems indicate that the corrosive properties of Lake Meade water, as well as design deficiencies, will lead to premature pump failure due to erosion of the existing pump casings. Two pump casings have been replaced on an experimental basis by units constructed of stainless steel. Operations experience indicates that such replacement will solve the erosion problems at the remaining pumps. Should multiple pump failure occur, alternate water sources will be inadequate to serve the project area and serious shortages will result.

Of particular note is that the expense incurred by the Bureau of Reclamation would be for the pump casings only; installation and appurtenant equipment would be financed by non-federal sources.

LEGISLATIVE HISTORY

S. 1621 was introduced on September 15, 1981 by Senators Cannon and Laxalt. A hearing was held before the Subcommittee on Water and Power on April 22, 1982 at which time the Administration testified in favor of the bill.

A companion measure, H.R. 5569 was introduced in the House on February 23, 1982. The bill was referred to the House Committee on Interior and Insular Affairs where it is pending action before the Subcommittee on Water and Power Resources.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business meeting on May 5, 1982, by unanimous vote of a quorum present recommended that the Senate pass S. 1621, if amended as described herein.

The rollcall vote on reporting the measure was 17 yeas and 0 nays as follows:

YEAS	NAYS
Mr. McClure	
Mr. Hatfield [1]	
Mr. Weicker [1]	
Mr. Domenici [1]	
Mr. Wallop	
Mr. Warner	
Mr. Humphrey	
Mr. Murkowski	
Mr. Nickles	
Mr. East	
Mr. Heinz [1]	
Mr. Jackson	
Mr. Johnston [1]	
Mr. Ford	
Mr. Matsunaga	
Mr. Melcher [1]	
Mr. Bradley	

[1] Indicates vote by proxy.

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COMMITTEE AMENDMENT

The Committee amendment is technical in nature and serves to conform the measure to the requirements of the Congressional Budget Act of 1974.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs associated with this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 7, 1982.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 1621, a bill to authorize the replacement of existing pump casings in Southern Nevada water project pumping plants 1A and 2A, and for other purposes.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

RAYMOND C. SCHEPPACH
(For Alice M. Rivlin, Director).

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

MAY 7, 1982.

1. Bill number: S. 1621.

2. Bill title: A bill to authorize the replacement of existing pump casings in Southern Nevada water project pumping plants 1A and 2A, and for other purposes.

3. Bill status: As ordered reported by the Senate Committee on Energy and Natural Resources, May 5, 1982.

4. Bill purpose: This bill authorizes the Secretary of the Interior to procure twelve stainless steel pump casings for two pumping plants of the Southern Nevada water project, and authorizes the appropriation of funds necessary for this purpose.

5. Cost estimate:

	Millions
Estimated authorization level:	
Fiscal year:	
1983	$1.8
1984	-----
1985	-----
1986	-----
1987	-----
Estimated outlays:	
Fiscal year:	
1983	1.8
1984	-----
1985	-----
1986	-----
1987	-----

The costs of this bill fall within budget function 300.

6. Basis of estimate: For the purpose of this estimate it is assumed that all funds authorized will be appropriated in fiscal year 1983, The estimated authorization level was derived by adjusting the $1.5 million (in July 1980 price levels) authorized in the bill to reflect historical and projected cost increases. Based on information from the Bureau of Reclamation, it is anticipated that all of the casings will be purchased in the year in which the funds are appropriated.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Debbie Goldberg.

10. Estimate approved by:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred on the passage of S. 1621.

It is the Committee's expressed opinion that the bill is not a regulatory measure in the sense of imposing Government established standards or significant responsibilities on private individuals or businesses and that little, if any, additional paperwork would result from enactment of S. 1621 other than that which would normally be associated with such Federal procurement activities as authorized by the bill.

EXECUTIVE COMMUNICATIONS

Although S. 1621 was referred to the Department of the Interior and the Office of Management and Budget on November 4, 1981, for comment no legislative reports were received. However, following is the statement submitted by the Department of the Interior at the Subcommittee hearing on April 22, 1982:

STATEMENT OF ROBERT N. BROADBENT, COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Mr. Chairman, members of the Subcommittee. I am pleased to be here to present the Department's views on S. 1621. The bill, if enacted, would provide for the replacement of pump casings for 12 of the 14 horizontal centrifugal pumping units in Pumping Plants 1A and 2A, Southern Nevada Water Project, Stage 1, Nevada. (Two casings were replaced previously on an experimental basis, which proved successful.) The project was developed by the Bureau of Reclamation. These 14 units pump water from the Alfred Merritt Smith Water Treatment Plant near the shore of Lake Mead through project water conveyance pipelines to terminal storage facilities which feed water distribution systems serving Las Vegas, North Las Vegas, Henderson, Nellis Air Force Base, and other communities in the Las Vegas area.

We recommend enactment of S. 1621.

The operation of the original pumps and motors at Pumping Plants 1A and 2A has been unsatisfactory. Maintenance costs have been extraordinarily excessive, and it is clearly evident that the lifespan of the units will be significantly shorter than normal unless the units are modified.

Hitachi American, Ltd., under the Bureau of Reclamation Solicitation No. DS–6637, furnished the pumps, motors, and appurtenant equipment; the company also supervised the installation. The pumps and motors were placed in operation in 1971. In January 1973, a unit was dismantled because of the development of unusual noise. Excessive cavitation damage was found, as evidenced by holes completely through some of the pump impeller vanes. Cavitation also was found on the casing at the eye of the impeller (intake side). At that time, the unit had operated approximately 2,100 hours. Although the one-year warranty period had expired and Hitachi did not admit legal responsibility under the contract, Hitachi agreed to reshape the leading edge of the vanes in all 14 impellers, and the company contributed $18,500 as its part of the cost. The project water users assumed responsibility for the remaining costs, including the costs of dismantling and reassembling the units. After testing, it was apparent that the cavitation problem had not been solved.

Since the expiration of the warranty period, Hitachi has expended considerable effort to modify the pumps so that they would operate satisfactorily. Costs expended on the effort to obtain acceptable results from the pumps approximate $1 million by Hitachi, $300,000 by the water users, and $150,000 by Reclamation. Reclamation's costs must be repaid with interest by the water users. The combined expense of remedial measures to date far exceeds Hitachi's original bid of $693,400 for furnishing the pumps, motors, appurtenant equipment, and its supervision of the installation.

Model tests and impeller redesign since the problem was discovered in 1973 indicate that many factors were involved, such as the synchronous speed of the units (1,200 revolutions per minute), the magnitude of the suction and discharge head, the corrosive effect of the water, and the type of materials used in the casings and impellers.

Major changes that were made subsequent to installation of the original equipment include: (1) redesigned impellers; (2) modification of the casing baffle plates; and (3) changing the start/stop time sequencing for the pump valving. All of these measures helped diminish the magnitude of the problem, but did not totally resolve it.

In July 1979, we decided to install two stainless steel casings, fabricated by Hitachi, in a research program as a final effort to resolve the problem. Had that effort failed to resolve the problem, there appeared to be no alternative left but to replace all of the pumps and motors with units having a synchronous speed of 900 revolutions per minute. However, the results of the research program completed in 1980 are conclu-

sive. They show that replacement of the existing cast steel casings with stainless steel casings is a final acceptable technical solution to the cavitation/corrosion/erosion problems. The motors, shafts, and impellers will not have to be replaced if the casings are replaced.

The proposed legislation would authorize the Secretary of the Interior to procure the pump casings and appurtenant equipment. The Secretary would be authorized to deal with Hitachi for the purchase, in order to assure conformity of the materials and to obtain the favorable price offered by Hitachi (at cost). The State of Nevada has agreed to install the casings and appurtenant parts at its cost, subject to approval by the Secretary.

The estimated cost of procuring the stainless steel casings is $1.5 million (July 1980 price levels). Because of the very poor performance of the existing units almost from the inception of the project, the exceptionally high cost to date of maintenance, the additional costs incurred by the water users, and the participation of the State in the casing replacement, we believe that it would be appropriate to make the cost of procuring the pump casings and appurtenant parts nonreimbursable, as indicated in S. 1621.

I would be pleased to answer any questions that you may have.

Thank you.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are to be made by the bill, S. 1621, as reported.

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